

Of Counsel:

ALSTON HUNT FLOYD & ING

Attorneys At Law

A Law Corporation

PAUL ALSTON 1126-0

GLENN T. MELCHINGER 7135-0

JASON H. KIM 7128-0

American Savings Bank Tower

1001 Bishop Street, 18th Floor

Honolulu, Hawai'i 96813

Telephone: (808) 524-1800

Facsimile: (808) 524-4591

Email: gtm@ahfi.com

Attorneys for Plaintiffs

and Third-Party Defendants,

the SS Companies

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD.,
a Japanese corporation,

Plaintiff,

vs.

QK HOTEL, LLC, a Hawai'i
limited liability company,
et al.,

Defendants,

and

) CIVIL NO. CV 04-00124
) ACK/BMK
)

) CONSOLIDATED CASES
)

) **THE SPORTS SHINKO**
) **COMPANIES' ANSWER TO**
) **KG HOLDINGS, LLC's,**
) **KIAHUNA GOLF CLUB, LLC's,**
) **KG KAUAI DEVELOPMENT,**
) **LLC's, PUKALANI GOLF**
) **CLUB, LLC's, KG MAUI**
) **DEVELOPMENT LLC's,**
) **MILILANI GOLF CLUB, LLC's**
) **QK HOTEL, LLC's AND**

FRANKLIN K. MUKAI, et al.,)	OR HOTEL LLC's COUNTERCLAIM FILED JANUARY 22, 2007; CERTIFICATE OF SERVICE
)	
Third-Party Plaintiffs,)	
)	
vs.)	
)	
SPORTS SHINKO (USA) CO.,)	
LTD., a Delaware corporation, et)	
al.,)	
)	
Third-Party)	
Defendants,)	
)	
and)	
)	
SPORTS SHINKO (HAWAII) CO.,)	
LTD., a Hawai`i corporation,)	
et al.,)	
)	
Third-Party Defendants/)	
Counterclaimants,)	
)	
vs.)	
)	
QK HOTEL, LLC, a Hawai`i)	
limited liability company,)	
et al.,)	
)	
Third-Party Counterclaim)	
Defendants.)	
_____)	

SPORTS SHINKO (USA) CO.,)	CIVIL NO. CV 04-00125
LTD., a Delaware corporation,)	ACK/BMK
)	
Plaintiff,)	
)	
vs.)	
)	
PUKALANI GOLF CLUB, LLC,)	
a Hawai'i limited liability)	
company, et al.,)	
)	
Defendants,)	
)	
and)	
)	
FRANKLIN K. MUKAI, et al.,)	
)	
Third-Party Plaintiffs,)	
)	
vs.)	
)	
SPORTS SHINKO CO., LTD.,)	
a Japan corporation, et al.,)	
)	
Third-Party)	
Defendants,)	
)	
and)	
)	
SPORTS SHINKO CO., LTD.,)	
a Japan corporation, et al.,)	
)	
Third-Party Defendants/)	
Counterclaimants,)	
)	
vs.)	

PUKALANI GOLF CLUB, LLC,)
a Hawai'i limited liability)
company, et al.,)
)
Third-Party Counterclaim)
Defendants.)

SPORTS SHINKO (USA) CO.,)
LTD, a Delaware corporation,)

Plaintiff,)

vs.)

KIAHUNA GOLF CLUB, LLC,)
a Hawai'i limited liability)
company, et al.,)

Defendants,)

and)

FRANKLIN K. MUKAI, et al.,)

Third-Party Plaintiffs,)

vs.)

SPORTS SHINKO CO., LTD.,)
a Japan corporation, et al.,)

Third-Party)
Defendants,)

and)

CIVIL NO. CV 04-00126
ACK/BMK

SPORTS SHINKO (HAWAII) CO.,)
LTD., a Hawai`i corporation,)
et al.,)

Third-Party Defendants/)
Counterclaimants,)

vs.)

KIAHUNA GOLF CLUB, LLC,)
a Hawai`i, limited liability)
company, et al.,)

Third-Party Counterclaim)
Defendants.)

SPORTS SHINKO CO., LTD.,)
a Japanese corporation,)

Plaintiff,)

vs.)

OR HOTEL, LLC, a Hawai`i)
limited liability company,)
et al.,)

Defendants,)

and)

FRANKLIN K. MUKAI, et al.,)

Third-Party Plaintiffs,)

vs.)

CIVIL NO. CV 04-00127
ACK/BMK

SPORTS SHINKO (USA) CO.,)
LTD., a Delaware corporation,)
et al.,)

Third-Party)
Defendants,)

and)

SPORTS SHINKO (HAWAII) CO.,)
LTD., a Hawai`i corporation,)
et al.,)

Third-Party Defendants/)
Counterclaimants,)

vs.)

OR HOTEL, LLC, a Hawai`i)
limited liability company,)
et al.,)

Third Party Counterclaim)
Defendants.)

SPORTS SHINKO (USA) CO.,)
LTD., a Delaware corporation,)

Plaintiff,)

vs.)

MILILANI GOLF CLUB, LLC,)
a Hawai`i limited liability)
company, et al.,)

CIVIL NO. CV 04-00128
ACK/BMK

Defendants,)
)
and)
)
FRANKLIN K. MUKAI, et al.,)
)
Third-Party Plaintiffs,)
)
vs.)
)
SPORTS SHINKO CO., LTD.,)
a Japan corporation, et al.,)
)
Third-Party)
Defendants,)
)
and)
)
SPORTS SHINKO (HAWAII) CO.,)
LTD., a Hawaii corporation,)
et al.,)
)
Third-Party Defendants/)
Counterclaimants,)
)
vs.)
)
MILILANI GOLF CLUB, LLC,)
a Hawai'i limited liability)
company, et al.,)
)
Third-Party Counterclaim)
Defendants.)
_____)

PLAINTIFFS SPORTS SHINKO CO., LTD. AND SPORTS SHINKO (USA) CO., LTD.'S ANSWER TO KG HOLDINGS, LLC's, KIAHUNA GOLF CLUB, LLC's, KG KAUAI DEVELOPMENT, LLC's, PUKALANI GOLF CLUB, LLC's, KG MAUI DEVELOPMENT LLC's, MILILANI GOLF CLUB, LLC's QK HOTEL, LLC's AND OR HOTEL LLC's COUNTERCLAIM FILED JANUARY 22, 2007

Plaintiffs SPORTS SHINKO CO., LTD. and SPORTS

SHINKO (USA) CO., LTD. ("Plaintiffs") hereby respond to

Defendants KG Holdings, LLC's, Kiahuna Golf Club, LLC's,

KG Kauai Development, LLC's, Pukalani Golf Club, LLC's, KG Maui

Development LLC's, Mililani Golf Club, LLC's QK Hotel, LLC's and

OR Hotel LLC's (collectively, the "KG Entities") Counterclaim filed

January 22, 2007 (the "Counterclaim"); as follows:

FIRST DEFENSE

1. The Counterclaim fails to state a claim upon which relief may be granted.

SECOND DEFENSE

2. Plaintiffs admit the allegations contained in paragraphs 1, 2, 4, 5, 6, and 10 of the Counterclaim.

3. Plaintiffs deny each and every allegation contained in paragraphs 11, 14, 16, 18, 19, 20, 21, 22, 24, 25, 26, 27, 29, 30, 31, 32, 34, 35, 36, 37, 39, and 40 of the Counterclaim.

4. In answer to Paragraph 3 of the Counterclaim, Plaintiffs admit that SS-Japan has been the majority shareholder of SS-USA and that SS-USA is a Delaware corporation, but deny that SS-Japan has been the “controlling shareholder” of SS-USA on the basis that this term is vague and undefined.

5. In answer to Paragraph 7 of the Counterclaim, Plaintiffs admit that one or more of them owned, directly or indirectly, the SS Hawaii Entities, but deny that the SS Hawaii Entities were “controlled” by the Plaintiffs on the basis that this term is vague and undefined.

6. In answer to Paragraph 8 of the Counterclaim, Plaintiffs admit the allegations in the paragraph, except to deny the allegation that Sports Shinko Resort Hotel Corporation is a “debtor” as defined and referenced in the complaints.

7. In answer to Paragraph 9 of the Counterclaim, Plaintiffs admit the allegations in the paragraph, except to deny the

allegation that Sports Shinko Resort Hotel Corporation was a party to the PSA.

8. In answer to Paragraph 12 of the Counterclaim, Plaintiffs state that the referenced complaints speak for themselves and on that basis deny the allegations in this paragraph.

9. In answer to Paragraphs 13 and 15 of the Counterclaim, Plaintiffs state that the referenced documents speak for themselves and on that basis deny the allegations in these paragraphs.

10. In answer to Paragraphs 17, 23, 28, 33, and 38 of the Counterclaim, Plaintiffs incorporate by reference those portions of the above answer that correspond to the paragraphs of the Counterclaim referenced in paragraphs 17, 23, 28, 33, and 38 of the Counterclaim.

11. Any allegation not specifically admitted herein is denied.

THIRD DEFENSE

12. The KG Entities' claims are barred by the claims raised by Plaintiffs in their Complaints, including but not limited to

violations of Chapter 651C of the Hawaii Revised Statutes, Breach of Fiduciary Duty, and Creditor Fraud.

FOURTH DEFENSE

13. The KG Entities' claims are barred by the doctrines of unclean hands and *in pari delicto*.

FIFTH DEFENSE

14. The KG Entities' claims are barred by the doctrines of waiver and estoppel.

SIXTH DEFENSE

15. The KG Entities' claims are barred by fraud.

SEVENTH DEFENSE

16. The KG Entities' claims are barred by illegality.

EIGHTH DEFENSE

17. The KG Entities' claims are barred by the First Amendment to the United States Constitution, including but not limited to the *Noerr-Pennington* doctrine.

NINTH DEFENSE

18. The KG Entities' claims are barred by the intracorporate conspiracy doctrine.

TENTH DEFENSE

19. The KG Entities' claims are barred because any damages alleged by the KG Entities are due to their own actions or omissions, and/or those of their agents and/or those for whose actions it is charged by law with responsibility, and were not caused by the Plaintiffs.

ELEVENTH DEFENSE

20. The KG Entities' claims are barred because of their failure to avoid and/or mitigate their alleged damages.

WHEREFORE, the Plaintiffs pray that this Court:

- A. Dismiss the Counterclaim against them with prejudice.
- B. Award the Plaintiffs their attorneys' fees and costs herein.
- C. Grant the Plaintiffs such further and other relief that the Court deems just and proper under the circumstances.

DATED: Honolulu, Hawai'i, March 7, 2007.

_____/s/ Glenn T. Melchinger_____
PAUL ALSTON
GLENN T. MELCHINGER
JASON H. KIM

Attorneys for Plaintiffs
and Third-Party Defendants,
the SS Companies